

STATUS REPORT: CORPORATE LENIENCY PROGRAM

In August 1993, the Antitrust Division of the U.S. Department of Justice (“Division”) revised its Corporate Leniency Program to make it easier for and more attractive to companies to come forward and cooperate with the Division. Three major revisions were made to the program: (1) amnesty is automatic if there is no pre-existing investigation; (2) amnesty may still be available even if cooperation begins after the investigation is underway; and (3) all officers, directors, and employees who cooperate are protected from criminal prosecution. As a result of these changes, the Amnesty Program is the Division’s most effective generator of international cartel cases, and it is the Department’s most successful leniency program.

- **Application Rate.** The revised Corporate Amnesty Program has resulted in a surge in amnesty applications. Under the old amnesty policy the Division obtained roughly one amnesty application per year. Under the new policy, the application rate has been more than one per month. As a result of this increased interest, the Division frequently encounters situations where a company approaches the government within days, and in some cases less than one business day, after one of its co-conspirators has secured its position as first in line for amnesty. Of course, only the first company to qualify receives amnesty.
- **Case Generator.** In the last five years, cooperation from amnesty applications have resulted in scores of convictions and well over \$1.5 billion in fines. In fact, the majority of the Division’s major international investigations have been advanced through the cooperation of an amnesty applicant.
- **Amnesty - A Corporate “Super Saver”.** The vitamin, graphite electrodes, fine arts auctions, and marine construction investigations offer four prime examples of the stunning financial advantages for companies that take advantage of the Amnesty Program. In each of these matters, the amnesty applicant paid *zero* dollars in criminal fines.
- **Vitamins.** In the vitamin investigation, the applicant’s cooperation directly led to F. Hoffmann-La Roche’s and BASF’s decision to plead guilty and pay fines of \$500 million and \$225 million, respectively.

- Graphite Electrodes. In the graphite electrodes investigation, the next company in the door after the amnesty applicant paid a \$32.5 million fine, the third company in paid a \$110 million fine, and a fourth company pled guilty and paid a \$135 million fine. Mitsubishi was recently convicted at trial for its role as an aider and abetter of the cartel and was sentenced to pay a \$134 million fine.
- Fine Arts Auctions. The amnesty applicant's cooperation directly resulted in Sotheby's decision to plead guilty and pay a \$45 million fine.
- Marine Construction. In the marine construction investigation, a corporate co-conspirator agreed to plead guilty and cooperate with the government's investigation shortly after the investigation went overt based on information provided by the amnesty applicant. Though the company provided very valuable cooperation and received a significant reduction in its fine for that cooperation, it still paid a fine of \$49 million.
- **Amnesty Plus.** Currently, there are roughly 30 sitting grand juries investigating suspected international cartel activity. More than one-half of these investigations were initiated by evidence obtained as a result of an investigation of a completely separate industry. For example, a new investigation results when a company approaches the Division to negotiate a plea agreement in a current investigation and then seeks to obtain more lenient treatment by offering to disclose the existence of a second, unrelated conspiracy. Under these circumstances, companies that chose to self report and cooperate in a second matter can obtain what we refer to as "Amnesty Plus." In such a case, the company will receive amnesty, pay zero dollars in fines for its participation in the second offense, and none of its officers, directors, and employees who cooperate will be prosecuted criminally in connection with that offense. Plus, the company will receive a substantial additional discount by the Division in calculating an appropriate fine for its participation in the first conspiracy.

- **Confidentiality Policy.** The Division's policy is to treat as confidential the identity of amnesty applicants and any information obtained from the applicant. Thus, the Division will not disclose an amnesty applicant's identity, absent prior disclosure by or agreement with the applicant, unless authorized by court order. In the four cases noted above -- vitamins, graphite electrodes, fine art auctions, and marine construction -- the amnesty applicants issued press releases announcing their conditional acceptance into the corporate amnesty program thereby obviating the need to maintain their anonymity.